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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5492 OF 2012**

Vijay Punju Khairnar

..Petitioner

Vs.

State of Maharashtra & 2 ors.

..Respondents

.....

Mr. Mihir Desai, Senior Counsel for petitioner.

Mr. Anil Sakhare, Senior Advocate a/w. B.V. Samant, AGP for State.

.....

**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

DATE : 30th JANUARY, 2019

P.C. :

In this Petition, on our Board, the challenge is at the instance of one Shri Vijay Punju Khairnar. In his case, he has asserted that at the relevant time, he was retired as a Secretary of Vocational Education Examination Board, Maharashtra. The first respondent before us is the State and the second respondent is the Director, Vocational Education and Training. The third respondent is the Deputy Director of Vocational Education and Training.

2. The Writ Petition challenges the legality of a chargesheet, inquiry report and show cause notice issued by the Disciplinary Authority namely respondent Nos. 1 and 2 calling upon the petitioner to show cause as to why the findings in the inquiry report should not be accepted and appropriate penalty be not imposed on him.

3. The Writ Petition has been filed at such a stage and is pending in this Court. From the time it was instituted and moved before the Division Bench of this Court. There is an ad-interim order. On 25th June, 2012, the following order has been passed which operates as an ad-interim order till date :

“P.C. :

Issue notice before admission to the Respondents, returnable on 9th July, 2012. Mr. Gokhale, learned AGP waives service for Respondents.

2. Parties to take note that the matter will be disposed of at the admission stage. Matter to be heard along with (Appellate Side) Writ Petition No.4078 of 2011 and other connected matters.

3. There shall be ad-interim relief in terms of prayer clause (b).”

4. Since there is an ad-interim order in terms of prayer clause (b) of the Writ Petition, the respondents can do nothing

in furtherance of the chargesheet dated 28/5/2012, copy of which is at Exhibit 'F' to the Petition.

5. The Show Cause Notice calls upon the petitioner to show cause in the above terms.

6. It is the common ground that pursuant to this show cause notice (Exhibit 'H') dated 16/5/2011, the petitioner has been informed that there was due consideration of the petitioner's representation dated 21/11/2010. However, the State Government has decided to issue subject show cause notice calling upon him to show cause within a period of 7 days as to why the penalty in terms of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 shall not be imposed.

7. The show cause notice is stated to be traceable to Chapter XII of the Manual of Departmental Inquiries.

8. On 30th June, 2011, the petitioner replied to this

show cause notice and placed his version on record.

9. However, before the petitioner could be informed the outcome of the notice referred above, this Writ Petition has been filed and raising several contentions.

10. From the date this Writ Petition was filed and later on moved before the Division Bench, the respondent could not proceed in terms of their chargesheet and show cause notice dated 16/5/2011.

11. On the earlier occasion and today, we suggested to Shri Desai, learned Senior Counsel appearing for the petitioner and Mr. Sakhare, learned Senior Counsel, appearing for the respondents, as to why the petitioner cannot be granted an opportunity to raise all contentions touching legality and validity of the proceedings initiated against him. The petitioner can even at this stage and in reply to the show cause notice issued to him raised all contentions and particularly to the effect that from the

inception the disciplinary proceedings are vitiated. They are vitiated for the simple reason that there is a misconception and misconduct that certain policies of the Government particularly in matters of recruitment are not applicable to private aided technical High Schools and Junior Colleges. In fact, policy applies only to teaching post from the Government run Industrial Training Institute, Technical High Schools and Junior Colleges. Such a policy is now relied upon to initiate the disciplinary action is inapplicable.

12. Mr. Desai has sought time to speak to his clients and then revert back to the Court. Mr. Desai says today on instructions that the petitioner would be satisfied with the course suggested by this Court. He is not averse to raising all the contentions before the Disciplinary Authority/Competent Authority. He should be permitted to argue that from inception, the disciplinary inquiry is vitiated. It is founded on wrong and erroneous premise of a particular policy being applicable to the recruitment process initiated during the tenure of the petitioner.

However, Mr. Desai says that given the time lag and though the Writ Petitioner relies on the grounds and the comprehensive challenge raised in this Petition, still if the petitioner is advised to file additional reply to the show cause notice, he may be allowed to do so. Secondly, the ad-interim order granted by this Court should continue till the Disciplinary Authority takes a final call. Meaning thereby, even the pension which the petitioner has been drawing should be allowed to be drawn and that amount be released and disbursed to him subject of course to outcome of the proceedings before the Disciplinary Authority.

13. On taking instructions, even Mr. Sakhare says that the respondents are not averse to this course. The reply or additional reply, if any, should be filed within two weeks from today. Mr. Sakhare says that the proceedings should not be delayed. Further, the respondents must have an opportunity to carry and take the same to their logical conclusion.

14. In this view of the broad agreement, we already have

clarified that we have not examined the rival contentions at all, though detailed replies by way of affidavits, etc. are filed. Though several contentions are raised and that the Writ Petition has been pending before this Court for more than six years, is, therefore, not to be construed as expression of any opinion of this Court. We keep open all issues. We clarify that the petitioner can raise all contentions including those noted by us herein above with regard to the legality and validity of the inquiry. He can contend that such an inquiry is vitiated from its inception, that certain contentions going to the root of that inquiry or on the basis of which the inquiry is vitiated be allowed to be raised and if raised, the Disciplinary Authority shall duly consider them, after granting an opportunity to file a reply which should be filed within a period of 15 days from the receipt of the copy of this order.

15. Let the Competent Authority/Disciplinary Authority take a final decision as expeditiously as possible and in any event within a period of six weeks from the date of receipt of the

reply/additional reply from the petitioner.

16. Needless to clarify that in the event the rules contemplate an opportunity of personal hearing even at this stage then that be extended to the petitioner. It is entirely for the Disciplinary Authority to take a call on this issue and in terms of the applicable rules. Such a decision must be taken in accordance with law.

17. We again clarify that we have not examined any contentions and all of them are kept open for being raised before the Disciplinary Authority and in the event, the final order of the Disciplinary Authority is adverse to the petitioner, then, in the challenge to it in appropriate proceedings.

18. The Writ Petition is disposed of by continuing the above ad-interim order till the Disciplinary Authority reaches its conclusion and passes an order. In the event, that order is adverse to the petitioner, then, for a period of 15 days after its

communication to the petitioner, no coercive action, much less, deprivation of his pension should be taken.

19. The Writ Petition is disposed of. No costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)